I. Checklist Item 9: Nondiscriminatory Access to Telephone Numbers

When it served as Central Office ("CO") code administrator in its region, BellSouth satisfied the requirements of Checklist Item 9 by following number administration guidelines published by the Industry Numbering Committee. *See generally Milner Aff.* ¶¶ 206-212; *see also Second Louisiana Order* ¶ 264 (finding that BellSouth fully complied with the requirements of Checklist Item 9 during the period when it served as CO code administrator). Pursuant to those industry-standard procedures, BellSouth assigned 2,141 NXX CO codes to CLECs in its nine-state region, representing 21.4 million telephone numbers. *Milner Aff.* ¶ 208. BellSouth provided nondiscriminatory access to telephone numbers throughout its region by developing and applying identical standards and procedures for processing all number requests, without regard to the requesting carrier's identity. *Id.* BellSouth did not reject any requests for NXX code assignments, other than in the course of implementing jeopardy plans for number conservation that had been developed by consensus during Industry Jeopardy Meetings. *Id.* Likewise, BellSouth has never charged for NXX provisioning or activation. *Id.* ¶ 211.

In July and August 1999, Lockheed Martin assumed CO code administration and assignment responsibilities in BellSouth's operating region, and BellSouth has had no responsibility for number administration since that time. *Id.* ¶¶ 206-207. Although it is no longer a CO code administrator and no longer performs any functions with regard to number administration or assignment, BellSouth continues to adhere to all relevant industry guidelines and Commission rules, including the provisions for submitting NXX code requests, in entering code information into the appropriate national databases, activating NXX codes assigned to service providers in BellSouth's territory, filing semi-annual Number Resource Utilization Forecast Reports, and making available BellSouth NXX codes that are no longer in use. *Id.*

¶ 209. BellSouth has additionally established a single point of contact for NXX activation and for trouble reporting, ensuring the smooth provisioning and testing of CLEC NXX codes. *Id.* ¶ 211.

BellSouth thus complies with Checklist Item 9. *See GA/LA Order* ¶ 278. Indeed, BellSouth's compliance with this checklist item is so clear that no party contested it in any of the five state proceedings that preceded this Application. *See Ruscilli/Cox Joint Aff.* ¶ 3 n.2.

J. Checklist Item 10: Nondiscriminatory Access to Signaling and Call-Related Databases

In the *GA/LA Order*, the Commission held that BellSouth had demonstrated that it was providing nondiscriminatory access to signaling and call-related databases. *See GA/LA Order* ¶ 278; *accord Second Louisiana Order* ¶ 267. Indeed, no party challenged that conclusion in the Georgia/Louisiana proceeding. *See GA/LA Order* ¶ 278. Similarly, in the proceedings before the five state commissions that preceded this Application, no commenter challenged BellSouth's compliance with this checklist item. *See Ruscilli/Cox Joint Aff.* ¶ 3 n.2. Because BellSouth uses the same systems and procedures for providing nondiscriminatory access to signaling and call-related databases in these five states as it did in Georgia and Louisiana at the time of the successful application for those states, BellSouth also satisfies this checklist item in these five states. *See Milner Aff.* ¶¶ 213-248.

Signaling. CLECs in the five states at issue have nondiscriminatory access to BellSouth's SS7 network. *Id.* ¶¶ 217-222. A CLEC can use BellSouth's SS7 network for signaling between the CLEC's switches, between the CLEC's switches and BellSouth's switches, and between the CLEC's switches and the network of other parties connected to BellSouth's SS7 network. *Id.* ¶ 217. This SS7 network includes Signaling Links (dedicated transmission paths carrying signaling messages between switches and signaling networks) and

Signal Transfer Points (signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases). *Id.* ¶¶ 218-219.

Databases. Consistent with the Commission's rules, BellSouth provides CLECs access to all call-related databases. These databases include BellSouth's Line Information Database ("LIDB"), Toll Free Number Database, Calling Name Delivery ("CNAM") Database, Number Portability Database, and AIN Databases. *Id.* ¶¶ 223-248. In addition, BellSouth provides access to a Service Control Point ("SCP"), which is a network facility in which call-related databases reside. *Id.* ¶ 224. BellSouth provides access to these databases on a nondiscriminatory basis and in a manner that complies with the requirements of section 222 of the Communications Act. *Id.* ¶ 246. Again, the Commission has found that this access complies with all legal requirements. *See GA/LA Order* ¶ 278.

K. Checklist Item 11: Number Portability

Local number portability enables customers of facilities-based CLECs to retain their existing telephone numbers after they no longer subscribe to BellSouth's local service. The 1996 Act requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). Section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." *Id.* § 251(e)(2).

BellSouth has worked diligently to implement LNP. BellSouth has met the Commission's implementation dates for LNP and has been successful in implementing LNP throughout Alabama, Kentucky, Mississippi, North Carolina, South Carolina, and the entire BellSouth region. BellSouth has complied with all applicable requirements concerning LNP.

See, e.g., *KPSC 271 Order* at 38 ("BellSouth meets the standard for interim number portability and has complied with Commission Orders and the industry standards in this regard. BellSouth is also providing permanent number portability. Thus, this checklist item has been met."); *MPSC 271 Order* at 110 ("BellSouth provides number portability without causing any impairment in quality, reliability, or convenience to CLEC customers. The Commission therefore finds that BellSouth is in compliance with checklist item 11."); *SCPSC 271 Order* at 106 ("The Commission finds that, by providing local number portability, BellSouth has enabled customers of facilities-based CLECs to retain existing telephone numbers 'without impairment [of] quality, reliability, or convenience,' in accordance with all applicable statutes and regulations.") (quoting 47 U.S.C. § 153(30)). Because BellSouth's implementation of LNP in the five states is substantively identical to Georgia and Louisiana, *Milner Aff.* ¶ 252, the Commission should find that BellSouth has satisfied Checklist Item 11 in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina for the same reasons expressed in the Commission's prior order. *See GA/LA Order* ¶ 259 ("Based on the evidence in the record, we conclude, as did the Georgia and Louisiana Commissions, that BellSouth complies with the requirements of checklist item 11.") (footnote omitted).

BellSouth ensures that CLECs' customers won from BellSouth are able to retain their telephone numbers without impairment of quality, reliability, or convenience. *See Milner Aff.* ¶¶ 249-265; *GA/LA Order* ¶¶ 259-267. BellSouth has met all the requirements set forth by this Commission in its First Report and Order and First Memorandum Opinion and Order on

Reconsideration in the *Telephone Number Portability* docket.[64] BellSouth has provided number portability through the use of the Location Routing Number methodology, which this Commission found satisfies its performance criteria. *GA/LA Order* ¶ 259 & n.1005. BellSouth has implemented permanent number portability in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina in accordance with Commission rules. *Milner Aff.* ¶ 252. Indeed, as of November 19, 2001, every single switch in BellSouth's nine-state region has been equipped for LNP capability. *Id.*

As of March 31, 2002, BellSouth had ported 105,111 access lines in Alabama using LNP; in Kentucky, 44,625; in Mississippi, 33,932; in North Carolina, 245,201; and, in South Carolina, 99,890 lines. *Id.* ¶ 251. Region-wide, BellSouth had ported 1,992,369 access lines as of that date. *Id.*

For most LNP orders, BellSouth mechanically issues an order that will assign a trigger to a number to be ported, once the LSR has been accepted as complete. *Id.* ¶ 254. For certain complex orders – including Direct Inward Dialing and Private Branch Exchange numbers – BellSouth's process calls for formation of a Project Team to handle the conversion; the Project Team ensures that such orders are handled properly and that the conversions are accurately completed. *Id.* ¶¶ 254-255. BellSouth has fully implemented 10-digit Global Title Translation in its entire SS7 network in all five states, thus permitting the identification of calling parties whose numbers have been ported. *Id.* ¶¶ 263-265; *GA/LA Order* ¶ 267 (acknowledging BellSouth's region-wide implementation). BellSouth also has detailed, transparent processes in

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[64] First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 FCC Rcd 8352 (1996); First Memorandum Opinion and Order on Reconsideration, *Telephone Number Portability*, 12 FCC Rcd 7236 (1997).

place for provisioning partial ports of its customers' service to CLECs. *Milner Aff.* ¶ 254; *Ainsworth Aff.* ¶¶ 178-179.

In the *GA/LA Order*, this Commission properly concluded that AT&T's allegations regarding some of its customers being unable to receive calls from BellSouth customers involved, at most, anecdotal problems that did not establish noncompliance. This Commission agreed with the Georgia PSC that "these allegations are not indicative of a systemic failure in BellSouth's provision of number portability." *GA/LA Order* ¶ 261. That same finding applies here. BellSouth has extensive procedures in place for preventing these types of problems, including the formation of Project Teams to oversee large and complex CLEC orders. *Milner Aff.* ¶¶ 254-255; *Ainsworth Aff.* ¶¶ 173-185. As a result, such incidents are largely a thing of the past. When they do occur, it is usually due to CLEC data processing errors. *Milner Aff.* ¶ 256; *see also, e.g.*, *SCPSC 271 Order* at 109-10 ("The Commission notes with interest that AT&T chose to raise the issue in these proceedings without providing any specific information that would be useful in making a factual determination. This Commission will not find noncompliance based on speculative allegations unsupported by evidence.") (citation omitted). In the *GA/LA Order*, the Commission also properly dismissed other concerns regarding number portability.[65]

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[65] *See GA/LA Order* ¶ 263. In particular, the Commission correctly rebuffed AT&T's claims regarding "oddball codes." These codes generally are non-portable for good reason, and their non-portability does not mean that CLECs cannot compete for the customers served by those numbers. *See Milner Aff.* ¶¶ 258 ("choke" codes used for radio call-in contests are necessarily not portable due to the way the "choke" system works, but CLECs can compete for the relevant service by making appropriate call-forwarding arrangements with BellSouth), 259-260 (several oddball codes are used for internal BellSouth functions and are never assigned to retail customers; nonetheless, BellSouth has agreed to use toll-free numbers for its internal communications instead; migration to toll-free numbers will be complete by December 2003, at which point these codes will be returned to North American Numbering Plan Administrator), 262

In 1999 and 2000, some CLECs experienced duplicate assignment of their customers' ported telephone numbers. This was due to two separate problems, one related to BellSouth's order negotiation systems' handling of improperly formatted orders, and the other due to a BellSouth software malfunction. *Ainsworth Aff.* ¶¶ 174-176. The first problem was fixed in late 1999, and has not recurred. *Id.* ¶ 175. BellSouth is currently pursuing an automated, software-based solution to the second problem, and has had in place since January 2001 an effective interim manual solution. *Id.* ¶ 176. This solution has resulted in significant improvements: in December 2001, 0.03% of ported numbers were not marked correctly; in January 2002, only 0.02% were incorrectly marked, and the few that were incorrectly marked were corrected. *Id.* And, in February and March 2002, all orders were marked correctly. *Id.* This Commission concluded in the Georgia/Louisiana proceeding that these issues "are *de minimis* and isolated, and thus do not warrant a finding of noncompliance for this checklist item." *GA/LA Order* ¶ 260; *see also, e.g., MPSC 271 Order* at 107 ("The evidence indicates BellSouth's efforts ensure that this problem will not recur in the future, and thus does not warrant a finding of noncompliance."); *SCPSC 271 Order* at 107-08 ("This does not appear to be a widespread problem, as BellSouth was not notified of this issue in its current form until the last quarter of

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(codes relating to AIN services that predated LNP either already point to normal network numbers that can be ported or can be easily modified to point to portable numbers; moreover, they are thinly subscribed and are being phased out, at which point BellSouth will surrender those numbers to the North American Numbering Plan Administrator); *see also GA/LA Order* ¶ 263 & n.1026.

Regardless, the non-portability of numbers in these codes has no effect on CLECs' ability to compete, as this Commission has recognized. *GA/LA Order* ¶ 263 ("Given the relatively small number of central office codes involved, the fact competitive LECs can allow their customers to access the majority of these codes, and that the actual numbers that these codes point to are portable, we do not believe these arrangements demonstrate that BellSouth fails to comply with the requirements of checklist items 11 and 12."); *see also, e.g., MPSC 271 Order* at 108 ("The Commission concludes that these problems do not present conduct by BellSouth that would warrant a finding of noncompliance with this checklist item.").

2000. Once BellSouth was notified of the problem, the evidence shows that BellSouth was determined to resolve this issue quickly . . . . BellSouth committed to resolving the problem of reassigned numbers as soon [as] it was notified. Thus, the Commission concludes that this issue does not rise to a level to warrant a finding of noncompliance.").

BellSouth has mechanisms in place to ensure that CLECs' customers are not double-billed for ported numbers. Because double-billing can just as likely be due to the CLEC beginning to bill its customer too early as BellSouth terminating its billing too late, *see, e.g., SCPSC 271 Order* at 108 ("AT&T . . . failed to bring to the Commission's attention the fact that CLECs can be the source for . . . duplicate billing."), BellSouth provides CLECs with access to a mechanized order completion notice indicating when the order has been processed. *Scollard Aff.* ¶ 24. BellSouth has also undertaken other steps to address this issue. *See id.* Moreover, as this Commission has noted, BellSouth has worked closely through collaboratives to investigate and resolve any double-billing issues that have arisen. *GA/LA Order* ¶ 262; *SCPSC 271 Order* at 108-09 ("[O]ccurrences of improper reassignment of numbers and duplicate billing are rare, which is evidenced by the fact that AT&T has not provided the Commission any specific examples to support its allegations. Moreover, BellSouth has implemented an efficient process by which the CLEC can resolve any such matters.") (citation omitted).

The five state commissions have also established performance measures to capture BellSouth's provisioning of number portability. These include: Percentage of Rejected Service Requests for Local Number Portability, Firm Order Confirmation Timeliness Average Interval for Local Number Portability, Percent Missed Installation Appointments for Local Number Portability, Average Disconnect Timeliness Interval for Local Number Portability, and Total Service Order Cycle Time for Local Number Portability. *Varner Aff.* ¶¶ 170-171.

BellSouth's performance for LNP-related submetrics demonstrates that BellSouth's implementation of number portability gives competitors a meaningful opportunity to compete in the five states. From January through March 2002, BellSouth met or exceeded the retail analogue for the majority of submetrics relating to LNP in all five states, *see Varner Aff.* Exhs. PM-2 ¶¶ 168-180 (Alabama), PM-3 ¶¶ 168-181 (Kentucky), PM-4 ¶¶ 162-174 (Mississippi), PM-5 ¶¶ 175-190 (North Carolina), PM-6 ¶¶ 162-172 (South Carolina); moreover, there were no held orders in any states, *id.* Exhs. PM-2 ¶¶ 170, 173 (Alabama), PM-3 ¶¶ 170, 173 (Kentucky), PM-4 ¶¶ 164, 167 (Mississippi), PM-5 ¶¶ 177, 181 (North Carolina), PM-6 ¶¶ 164, 167 (South Carolina), and in all five states BellSouth's CLEC performance for Percent Missed Installation Appointments for non-dispatch, stand-alone LNP was at parity with retail in at least two of the three months (all three months for Alabama, Kentucky, Mississippi, and South Carolina), *id.* Exhs. PM-2 to -3 ¶ 174 (Alabama and Kentucky), PM-4 and -6 ¶ 168 (Mississippi and South Carolina), PM-5 ¶ 182 (North Carolina).

BellSouth's performance was particularly outstanding in several respects. For example, from January through March 2002, BellSouth completed non-dispatched LNP orders for CLECs in an average of 0.55 days in Alabama, 0.82 days in Kentucky, 0.50 days in Mississippi, 0.49 days in North Carolina, and 0.53 days in South Carolina, compared with 0.79, 0.88, 0.78, 0.86, and 0.86 days for BellSouth's retail operations in those states, respectively. *Id.* Exhs. PM-2 to -3 ¶ 170 (Alabama and Kentucky), PM-4 and -6 ¶ 164 (Mississippi and South Carolina), PM-5 ¶ 177 (North Carolina).

L. Checklist Item 12: Local Dialing Parity

In the *GA/LA Order*, the Commission held that BellSouth had demonstrated that it was providing "[n]ondiscriminatory access to such services or information as are necessary to allow

Louisiana Order, the Commission found BellSouth in compliance with these obligations. *Second Louisiana Order* ¶¶ 299-303. The Commission again found that BellSouth complies with these duties in the Georgia/Louisiana proceeding. *GA/LA Order* ¶ 271. Because BellSouth currently provides reciprocal compensation throughout its region on the same terms and conditions as it did in Georgia and Louisiana at the time of those applications, BellSouth also satisfies this checklist item in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. *Ruscilli/Cox Joint Aff.* ¶¶ 47-53; *Milner Aff.* ¶¶ 269-270.

In accordance with sections 271 and 252(d)(2), and under the supervision of the five state commissions, BellSouth has established just and reasonable rates for reciprocal compensation, thereby ensuring that CLECs and BellSouth receive mutual and reciprocal recovery of costs associated with the transport and termination of local calls. *See Ruscilli/Cox Joint Aff.* ¶¶ 47-53 (in general), 109 (Alabama), 137-138 (Kentucky), 161-162 (Mississippi), 182 (North Carolina), 204-206 (South Carolina); *Milner Aff.* ¶¶ 269-270; *cf. KS/OK Order* ¶¶ 248-249 (BOCs must implement arrangements with CLECs by which the parties compensate each other for termination of traffic exchanged between their networks). State commission-approved rates for reciprocal compensation are set forth in Attachment A to the Alabama, Kentucky, Mississippi, North Carolina, and South Carolina SGATs. *Ruscilli/Cox Joint Aff.* Exhs. JAR/CKC-1 (Alabama), JAR/CKC-2 (Kentucky), JAR/CKC-3 (Mississippi), JAR/CKC-4 (North Carolina), JAR/CKC-5 (South Carolina). BellSouth makes reciprocal compensation payments to CLECs in a timely fashion in all five states. *Milner Aff.* ¶ 290.

BellSouth's actions and performance at this time are consistent with the successful showing made to this Commission in the Georgia/Louisiana proceeding. *Milner Aff.* ¶ 270; *Ruscilli/Cox Joint Aff.* ¶ 53. Thus, it meets this checklist obligation.

N. Checklist Item 14: Resale

Section 271(c)(2)(B)(xiv) requires a BOC to make "[t]elecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. § 271(c)(2)(B)(xiv). In the *GA/LA Order*, this Commission concluded that BellSouth has a specific legal obligation in its interconnection agreements and tariffs in both Georgia and Louisiana to make its retail telecommunications services available for resale to competing carriers at wholesale rates. *GA/LA Order* ¶ 273. The same is true in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. *See Ruscilli/Cox Joint Aff.* ¶¶ 68 (in general), 110-111 (Alabama), 139-142 (Kentucky), 163-164 (Mississippi), 183-184 (North Carolina), 207-209 (South Carolina).

As of March 31, 2002, multiple competing carriers in the five states are reselling tens of thousands of BellSouth lines. In Alabama, CLECs are reselling more than 42,700 lines; in Kentucky, more than 29,300 lines; in Mississippi, more than 43,900 lines; in North Carolina, more than 50,000 lines; and, in South Carolina, more than 48,400 lines. *See Milner Aff.* ¶ 272; *Stockdale Aff.* ¶¶ 16 (Alabama), 26 (Kentucky), 36 (Mississippi), 42 (North Carolina), 49 (South Carolina) & Exhs. ES-11 to -25.

BellSouth offers its services for resale in the five states at the state-commission-approved discounts. *See Ruscilli/Cox Joint Aff.* ¶¶ 110-111, 139-140, 163-164, 183-184, 207-208. As reflected in BellSouth's performance data, BellSouth has met the benchmarks for the vast majority of reject-interval and FOC-timeliness submetrics in each state from January through March 2002. *See Varner Aff.* Exhs. PM-2 ¶¶ 182-186 (Alabama), PM-3 ¶¶ 183-187 (Kentucky), PM-4 ¶¶ 176-180 (Mississippi), PM-5 ¶¶ 192-195 (North Carolina), PM-6 ¶¶ 174-178 (South Carolina) (A.1.4.1 - A.1.8.6 (Reject Interval)); PM-2 ¶¶ 187-190 (Alabama), PM-3 ¶¶ 188-191

(Kentucky), PM-4 ¶¶ 181-184 (Mississippi), PM-5 ¶¶ 196-199 (North Carolina), PM-6 ¶¶ 179-182 (South Carolina) (A.1.9.1 - A.1.13.6 (FOC Timeliness)).

BellSouth provisions resale lines in a timely manner, generally meeting or exceeding the retail analogue for installation timeliness and missed installations from January through March 2002. *See id.* Exhs. PM-2 ¶ 192 (Alabama), PM-3 ¶ 193 (Kentucky), PM-4 ¶ 186 (Mississippi), PM-5 ¶¶ 201-202 (North Carolina), PM-6 ¶ 184 (South Carolina) (A.2.1.1.1.1 - A.2.1.6.2.2 (Order Completion Interval)); PM-2 ¶ 195 (Alabama), PM-3 ¶ 196 (Kentucky), PM-4 ¶ 189 (Mississippi), PM-5 ¶ 205 (North Carolina), PM-6 ¶ 187 (South Carolina) (A.2.11.1.1.1 - A.2.11.6.2.2 (% Missed Installation Appointments)). CLECs have also generally experienced a lower average of percent trouble reports within 30 days after installation of a resale line compared to BellSouth retail in each state from January through March 2002. *See id.* Exhs. PM-2 ¶ 196 (Alabama), PM-3 ¶ 197 (Kentucky), PM-4 ¶ 190 (Mississippi), PM-5 ¶ 206 (North Carolina), PM-6 ¶ 188 (South Carolina) (A.2.12.1.1.1 - A.2.12.6.2.2 (% Provisioning Troubles within 30 days)).[67]

BellSouth also provides maintenance and repair services for resale lines that afford CLECs with a meaningful opportunity to compete. Both mean time to repair and repeat trouble rates have been in parity in each state, and BellSouth has generally missed fewer repair appointments for CLECs than it has for retail customers. *See id.* Exhs. PM-2 ¶ 200 (Alabama), PM-3 ¶ 201 (Kentucky), PM-4 ¶ 194 (Mississippi), PM-5 ¶ 210 (North Carolina), PM-6 ¶ 192 (South Carolina) (A.3.1.1.1 - A.3.1.6.2 (Missed Repair Appointments)); PM-2 ¶ 202 (Alabama),

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[67] Although BellSouth has missed the benchmark on some service order accuracy submetrics, the vast majority of the "misses" fall very close to the 95% benchmark, and the overall trend has been improving for the majority of submetrics. *See Varner Aff.* Exhs. PM-2 ¶ 197 (Alabama), PM-3 ¶ 198 (Kentucky), PM-4 ¶ 191 (Mississippi), PM-5 ¶ 207 (North Carolina), PM-6 ¶ 189 (South Carolina) (A.2.25.1.1.1 - A.2.25.3.2.2 (Service Order Accuracy)).

PM-3 ¶ 203 (Kentucky), PM-4 ¶ 196 (Mississippi), PM-5 ¶ 212 (North Carolina), PM-6 ¶ 194 (South Carolina) (A.3.3.1.1 - A.3.3.6.2 (Maintenance Average Duration)); PM-2 ¶ 203 (Alabama), PM-3 ¶ 204 (Kentucky), PM-4 ¶ 197 (Mississippi), PM-5 ¶ 213 (North Carolina), PM-6 ¶ 195 (South Carolina) (A.3.4.1.1 - A.3.4.6.2 (% Repeat Troubles within 30 days)). Moreover, the level of trouble reports for resale lines in each state is very low. *Id.* Exhs. PM-2 ¶ 201 (Alabama), PM-3 ¶ 202 (Kentucky), PM-4 ¶ 195 (Mississippi), PM-5 ¶ 211 (North Carolina), PM-6 ¶ 193 (South Carolina) (A.3.2.1.1 - A.3.2.6.2 (Customer Trouble Report Rate)).[68]

As this Commission concluded in the *GA/LA Order*, BellSouth's policies with respect to the resale of DSL services are entirely consistent with BellSouth's current obligations under Checklist Item 14. *GA/LA Order* ¶¶ 274-277. Just as in Georgia and Louisiana, BellSouth does not offer a DSL telecommunications service at retail in any of the five states, so it is not required to offer such a service at a resale discount pursuant to section 251(c)(4). *See Ruscilli/Cox Joint Aff.* ¶¶ 64-65. This Commission has already acknowledged that the section 271 process is not the appropriate proceeding in which to address the "far-reaching implications for a wide range of issues" relating to the regulatory treatment of high-speed Internet access services, *GA/LA Order* ¶ 277, and there is already underway a proceeding in which the Commission intends to answer many of these questions.[69]

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[68] The specific resale measures discussed in the preceding two paragraphs are the same ones that this Commission specifically identified in concluding that BellSouth had complied with Checklist Item 14 in Georgia and Louisiana. *See GA/LA Order* ¶ 273 n.1077.

[69] *See GA/LA Order* ¶ 277 & n.1091.

V. BELLSOUTH'S ENTRY INTO THE INTERLATA SERVICES MARKET IN ALL FIVE STATES WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

Section 271 requires this Commission to determine whether interLATA entry "is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). BellSouth's provision of interLATA services originating in the five states satisfies this requirement. As this Commission has previously recognized, "compliance with the competitive checklist is itself a strong indicator that long-distance entry is consistent with the public interest. This approach reflects the Commission's years of experience with the consumer benefits that flow from competition in telecommunications markets." *KS/OK Order* ¶ 266. As the Commission recently reiterated, "BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist." *GA/LA Order* ¶ 281.[70]

As has occurred in every other state where section 271 relief has been granted, BellSouth's long-distance entry in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina will stimulate both long-distance and local competition. Indeed, the consistent evidence of consumer savings where section 271 relief has been granted indicates that consumers in all five states will likely save hundreds of millions of dollars. In a recent empirical study of the consumer-welfare benefits from BOC entry into long-distance telecommunications markets in New York and Texas, the authors found statistically significant evidence that BOC entry enabled

[70] *See also Texas Order* ¶ 419; *New York Order* ¶ 428 ("BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. As a general matter, [this Commission] believe[s] that additional competition in telecommunications markets will enhance the public interest."); *Michigan Order* ¶ 381 ("BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunication markets.").

the average consumer to reap a 9% savings on her monthly interLATA bill in New York and a 23% savings in Texas. In addition, they found statistically significant evidence that CLECs have a substantially higher cumulative share of the local exchange market in states where BOC entry has occurred.[71]

Moreover, the state commission in each of the five states has adopted a meaningful performance assurance plan to ensure that BellSouth continues to meet the requirements of section 271.

A. Consumers Clearly Benefit from Bell Company Entry into the In-Region, InterLATA Market

If this Commission's experience with the section 271 process over the last several years teaches anything, it is that section 271 approval vastly accelerates both long-distance and local competition. Chairman Powell has recognized "a correlation between the process for approving applications and growing robustness in the markets."[72] There is every reason to believe that this correlation will continue in the five states covered by this application.[73]

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[71] Jerry A. Hausman, Gregory K. Leonard & J. Gregory Sidak, *The Consumer-Welfare Benefits from Bell Company Entry into Long-Distance Telecommunications: Empirical Evidence from New York and Texas* 3 (Jan. 2002), *at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=289851 ("*Consumer-Welfare Benefits*").

[72] *See* Rodney L. Pringle, *Powell Says Innovation Will Drive Telecom Upswing*, Communications Today, June 6, 2001 (internal quotation marks omitted). Consumers in New York alone have saved up to $700 million a year as a result of greater competition. *See* Telecommunications Research & Action Center, *15 Months After 271 Relief: A Study of Telephone Competition in New York* 8-9 (Apr. 25, 2001) ("An average consumer that switched to Verizon for long-distance service will save between $3.67 and $13.94 a month . . . . [P]hone competition has brought up to $700 million of savings to New York consumers.").

[73] *See Consumer-Welfare Benefits* at 13 ("We predict that, when the BOCs receive section 271 approvals in other states, a similar significant decrease in long-distance prices will occur that leads to consumer benefits.").

BellSouth's entry into long-distance markets in the five states, like that of the other BOCs, is particularly pro-competitive because it will give consumers an attractive alternative single source (and bill) for local and long-distance services, placing significant pressure on the competition to provide lower prices, enhanced services, and greater quality. Survey after survey has shown customers' confusion and frustration with telephone bills.[74]

With simpler long-distance rates and the convenience of one all-inclusive telephone bill, the 271-approved BOCs have attracted an unexpectedly high number of customers. After only six months in Texas, SBC had 1.7 million long-distance lines; after only nine months, that number had grown to 2.1 million lines.[75] Twelve months after entry in Texas and four months after entry in Oklahoma and Kansas, SBC had a total of 2.8 million long-distance lines in service.[76]

BOC entry into long-distance markets has invigorated competition in *local* markets as well. On March 5, 2002, while BellSouth's Georgia/Louisiana Application was pending, AT&T announced that it would offer BellSouth customers in Georgia, particularly residential consumers, a "new choice for local phone service."[77] WorldCom earlier announced a similar mass entry into BellSouth's Georgia market – and immediately began signing up more than

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[74] *See SBC Communications to Launch Long Distance Service in Texas*, Bus. Wire, July 7, 2000 ("Seventy-eight percent of those surveyed incorrectly believe the average amount paid per minute for a long-distance call is between 5 and 14 cents. According to a recent survey by Gartner Group, the average consumer is paying 22 cents a minute for long distance.").

[75] *See* Michael J. Balhoff, *et al.*, Legg Mason – Equity Research, *Section 271 Relief: Bells Race IXCs/Each Other for New Markets/Revenues* Table 4 (June 24, 2001).

[76] *See* SBC, *Investor Briefing* 7 (July 25, 2001), *at* http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_IB_FINAL_Color.pdf.

[77] Letter from Joan Marsh, AT&T, to William Caton, Acting Secretary, FCC, CC Docket No. 02-35, Attach. (FCC filed Mar. 5, 2002).

16,000 customers a month.[78] And, more recently, WorldCom has announced the availability of its "Neighborhood" plan in all nine BellSouth states, including Georgia, Louisiana, and all of the states for which BellSouth seeks authority here.[79] The fact that the nation's two largest long-distance companies have recently begun to compete widely for both residential and business customers in BellSouth's region demonstrates that section 271 relief (and the imminence of such relief) spurs competition.

This Commission as well has recognized that "states with long-distance approval show [the] greatest competitive activity" in local telecommunications.[80] Indeed, former Chairman Kennard aptly noted in testimony to Congress that "[w]e need only review the state of competition in New York and Texas to know the Act is working."[81] And other experts agree: "BOC entry [into the New York and Texas long-distance markets] caused a significant increase in the CLECs' cumulative market share. Most of the change in CLEC share is attributable to AT&T Local and MCI Local, which now must compete to keep their residential local customers by offering bundles of local and long-distance services, because the BOC can now offer a similar package to residential consumers."[82]

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[78] Walter C. Jones, *PSC Opens Long-Distance Line for BellSouth*, Florida Times-Union, Oct. 3, 2001.

[79] *See supra* note 6.

[80] *See* FCC News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition* (May 21, 2001).

[81] William E. Kennard, Chairman, FCC, *Statement Before the Committee on the Judiciary, United States House of Representatives, on H.R. 1686 – the "Internet Freedom Act" and H.R. 1685 – the "Internet Growth and Development Act"* (July 18, 2000), *at* http://www.house.gov/judiciary/kenn0718.htm.

[82] *Consumer-Welfare Benefits* at 12; *see also* Bruce Hight, *SW Bell Will Start Selling Long-Distance on Monday; AT&T, WorldCom Already Have Begun Counterattacks*, Austin American-Statesman, July 7, 2000, at A1 ("'Bell Atlantic's entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for

In sum, long-distance entry is a catalyst for competition in virtually all communications markets. It will bring vast benefits to consumers in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, as it has already begun to do for consumers in Georgia and Louisiana.

B. Performance Remedy Plans

This Commission concluded that the Service Performance Measurements and Enforcements Mechanisms (the SEEM plans) currently in place in Georgia and Louisiana "provide assurance that these local markets will remain open after BellSouth receives section 271 authorization." *GA/LA Order* ¶ 291. The SEEM plans in place in each of the five states are the same in all material aspects as the Georgia and Louisiana SEEM plans approved by this Commission. *See Varner Aff.* ¶ 211. The plans adopted in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina use the same statistical methodology, use the same transaction-based remedy calculation method, provide for remedy payments both to individual CLECs and to the relevant state regulatory bodies, set a meaningful and substantial cap on BellSouth's financial liability, and provide for annual audits, performance reviews, and a dispute resolution procedure. *See id.* ¶¶ 212-213.

The Alabama and Kentucky SEEM plans are precisely the same as the Georgia SEEM plan already reviewed by this Commission. *See id.* ¶¶ 214-215. The SEEM plans in each of the other states are substantially identical, although each includes certain minor state-specific modifications. For example, whereas the Alabama and Kentucky plans include 67 metrics under Tier 1 – *i.e.*, penalty payments paid directly to CLECs – the SEEM plans in the other states

consumers, generally across the board'") (quoting Sam Simon, Chairman, Telecommunications Research & Action Center).

include 56 metrics. *See id.* ¶¶ 216-218, 219 (table). The state commissions concluded that, because the remaining 11 metrics were regional measures that impact the CLEC industry as a whole, no Tier 1 payments were appropriate with respect to those specific metrics. *Id.* ¶ 263. Another difference is reflected in the applicability of the Tier 3 remedy – *i.e.*, voluntary suspension of long-distance sales and marketing. Whereas the Tier 3 remedy is included in the SEEM plans in Alabama, Kentucky, and North Carolina, the state commissions in Mississippi and South Carolina determined that BellSouth's financial risk of up to 36% of net revenues was a sufficient deterrent without imposing the additional Tier 3 penalty. *Id.* ¶ 229.[83]

BellSouth has placed a total of approximately $623 million at stake for the five states based on the provisions of the individual SEEM plans. *Varner Aff.* ¶ 222. The amount at risk in Alabama and Kentucky is equivalent to 44% of BellSouth's year 2000 net revenue in those states, and, in Mississippi, North Carolina, and South Carolina, the amount at risk is equivalent to 36% of BellSouth's net revenues in those states. *See id.* ¶¶ 219 (table), 222.[84] As a percentage of net revenue, 36% is consistent with the amounts placed at risk in performance plans approved by this Commission in New York, Massachusetts, Texas, Kansas, and Oklahoma, and the 44% level at risk in Alabama and Kentucky is the same as BellSouth's risk in Georgia under the SEEM plan approved by this Commission in the *GA/LA Order*. *Id.* ¶¶ 222-224.

In sum, the SEEM plans in the five states provide BellSouth with "adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market."

[83] In approving the Georgia and Louisiana SEEM plans, this Commission recognized that they differed from the New York and Texas plans. *See GA/LA Order* ¶ 292. Indeed, Tier 3 penalties had never been part of performance remedy plans in any application before Georgia/Louisiana, and the Commission has never mandated any particular penalty structure. *See id.* ¶ 294.

[84] *See New York Order* ¶ 436 n.1332; *KS/OK Order* ¶ 274 n.837; *Texas Order* ¶ 424 n.1235.

GA/LA Order ¶ 291. Like the SEEM plans in Georgia and Louisiana that this Commission recently reviewed and approved, the SEEM plans in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina constitute "probative evidence that [BellSouth] will continue to meet its section 271 obligations after a grant of such authority." *Id.*

VI. BELLSOUTH'S COMPLIANCE WITH SECTION 272

BellSouth complies with the requirements of sections 271(d)(3)(B) and 272, which require BST and its long-distance affiliate to operate independently of each other and conduct business on an arm's length, nondiscriminatory basis. *See generally Bhalla Aff.* (App. A, Tab B); *Ruscilli/Cox Joint Aff.* ¶¶ 225-322. As this Commission held in the Georgia/Louisiana proceeding, "BellSouth has demonstrated that it will comply with requirements of section 272." *GA/LA Order* ¶ 279. Indeed, no party contested BellSouth's showing that it would comply with section 272. *See id.*

Nor would there be any basis to contest BellSouth's showing of compliance here. BellSouth established BSLD as its section 272 affiliate to provide in-region, interLATA services in the GA/LA Application. BSLD will also be BellSouth's section 272 affiliate for in-region, interLATA services in the five states that are the basis of this Application. *See Bhalla Aff.* ¶ 6. Because BellSouth maintains the identical structural separation and nondiscrimination safeguards in the five states at issue here as it does in Georgia and Louisiana, *see Ruscilli/Cox Joint Aff.* ¶ 226, the Commission should find that BellSouth also satisfies the requirements of section 272 in these five states.

CONCLUSION

For the reasons presented above, this Application should be granted.

Respectfully submitted,

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